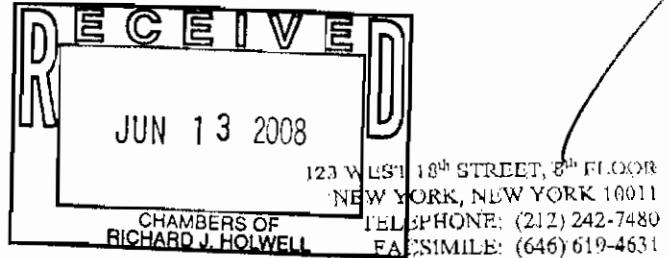


MARK L. LUBELSKY AND ASSOCIATES
ATTORNEYS AT LAW



VIA FACSIMILE

June 13, 2008

Hon. Richard J. Howell
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 6/18/08

Re: Lauria, Ronald v. City of New York
Index: 07CV6127
File no.: 6511

Dear Judge Howell:

We are counsel for plaintiff Ronald Lauria in the above referenced action. It is respectfully requested by plaintiff, with the consent of defense counsel, that plaintiff be granted leave to amend the caption to include Police Officer Michael Peppard (hereinafter "Officer Peppard"), and for an extension of time to effectuate service on said officer. It is respectfully requested by all counsel that the Court grant a 30-day extension of time to complete fact discovery from June 27, 2008 to July 28, 2008, so that defendant will have time to answer or otherwise respond.

Additionally, all parties respectfully request that the Court schedule a settlement conference of this matter or refer this matter to Magistrate Judge Andrew J. Peck for such. The parties have actively engaged in settlement discussions, but have been unable to resolve the matter. Prior to expending the costs of depositions the parties are interested in participating in a settlement conference with Your Honor or Magistrate Judge Andrew J. Peck at a date and time convenient for the Court on June 16, 20, 23, or 25, 2008.

The complaint alleges that plaintiff Ronald Lauria was falsely imprisoned and/or subjected to excessive force by police officers acting under the color of state law. At the time the complaint was filed and served, the identity of the alleged offending police officer(s) was unknown to plaintiff and his counsel. The caption indicated such as the individual defendant(s) named was referred to simply as "Police Officer John Doe." The identity of the police officer in question can now be ascertained from a disclosure made by defendants entitled "Taser/Stun Device Report" (hereinafter, the "Report"). The Report indicates Officer Peppard as the officer that discharged his taser device on plaintiff. (Report attached hereto).

Federal Rule of Civil Procedure 15(a)(2) provides for an amendment of pleadings before trial with opposing party's consent or leave of the Court. As stated, defense counsel has

- 2 -

consented to plaintiff's request to amend the caption of this matter to include Officer Peppard. Furthermore, the Court should grant plaintiff's application because the interests of justice so require. Plaintiff did not know or have any ability to ascertain the identity of the officer(s) that violated his rights as alleged in the complaint at the time of service. The Report was disclosed to plaintiff on June 12, 2008, and the present application is brought promptly thereafter on June 13, 2008.

Plaintiff furthermore respectfully requests an extension of time to serve the summons and complaint on Officer Peppard. Federal Rule of Civil Procedure 4(m) provides that "if the plaintiff shows good cause for the failure [to serve within 120-days of filing], the court must extend the time for service for an appropriate period." In the matter at bar, plaintiff certainly has good cause for failure to serve Officer Peppard within the 120-day period following the filing of the complaint, as plaintiff simply did not know the identity of the officer in question and there was no manner by which the officer's name could be ascertained.

An extension of time to complete fact discovery from June 27, 2008 to July 28, 2008 is warranted as plaintiff requires time to effectuate service on Officer Peppard and defense counsel must be afforded an opportunity to answer the complaint or otherwise respond, before the parties engage in the time and expense of depositions and further discovery. Although Your Honor previously stated that no further extensions would be granted, it is respectfully asserted by all parties that a settlement conference has a strong likelihood of resolving this matter.

Therefore, it is respectfully requested that the Court grant plaintiff's request, with the consent of defense counsel, for leave to amend the caption to include Officer Peppard, and for an extension of time to serve Officer Peppard. It is respectfully requested by all parties that the Court grant a 30-day extension of time to complete fact discovery in light of the foregoing, and the scheduling of a settlement conference of this matter before Your Honor or Magistrate Judge Andrew J. Peck.

Respectfully yours,

MARK L. LUBELSKY AND ASSOCIATES


David Gottlieb

cc: Megan Cavalieri, Esq.

So Ordered:


6/17/08